REMARKS

Claims 20-35 are currently pending. In order to advance prosecution, and without prejudice, the claims are amended to address the bases for the remaining rejections. The specification is amended to insert reference to nitrilase as a marker gene, as supported by claim 7 of the original PCT disclosure. None of the amendments constitutes new matter. For reasons set forth below, Applicants assert that the claims as amended are in order for allowance, and that the rejections should be removed.

1. The claims are not indefinite

Claims 20, 30 and dependent claims 21-29 and 31-35, are rejected as indefinite under 35 U.S.C. §112. A number of terms and phrases are contended to be indefinite.

First, the Examiner finds the phrase "in the direction of transcription" in claims 20 and 30 to be indefinite, because it is unclear whether it is referring to a further (omitted) gene element or a structural aspect of the promoter. In response, Applicants assert that the intended meaning refers to the positioning of the promoter so that it is functionally linked to the marker gene so as to control expression of the marker gene. To underscore this meaning, claims 20 and 30 are amended to provide for functional linkage between the promoter and the marker gene, as supported by paragraph 14 of the specification.

Second, the Examiner contends that claims 20 and 30 and their dependent claims are indefinite because the conditions required for excision of the *Impala* transposon are not specified. Applicants have amended the claims to require expression of transposase; use of the transposase to mobilize the *Impala* transposon is supported (*inter alia*) by paragraph 34 of the

specification. Of note, claim 30 has been amended to further require controlling expression of the transposase so as to permit reintegration of the *Impala* transposon and stabilization in the genome (see, for example, the specification at paragraph 36).

Third, the Examiner contends that the use of the terms "non-mobile transposon" and "defective transposon" is unclear. In this regard, Applicants would direct the Examiner to paragraph 20 of the specification, which defines a defective *Impala* transposon as "a transposon in which the transposase of the *Impala* element has been inactivated." Applicants believe that such a transposon would necessarily be non-mobile. However, to advance prosecution, Applicants have, without prejudice, amended the claims to refer to the transposons as "defective," except where the transposon is moving or has moved.

For all the above reasons, Applicants assert that the bases for the rejections have been obviated, so that the rejections should be removed.

2. <u>The claims do not contain new matter</u>

Claims 27, 30 and 32 are rejected under 35 U.S.C. §112 as lacking written description in the specification and therefore constituting new matter. In particular, the Examiner considers the terms "non-mobile transposon" and "nitrilase " to lack support.

While Applicants maintain that a "non-mobile" transposon is supported by the specification (the transposon is non-molbile when the transposase is not actively expressed), this term has been removed from the claims by amendment, so that the rejection should be withdrawn.

As for the term "nitrilase", Applicants note that a claim to nitrilase was made in the PCT grandparent of the present application (claim 7 of the PCT application) as well as in the present application, so that a marker gene which is a nitrilase is part of the original disclosure. Accordingly, Applicants amend the specification to recite "nitrilase" as a marker gene.

Accordingly, the rejections should be removed.

3. Conclusion

For all the foregoing reasons, it is believed that the new claims are in condition for allowance.

Respectfully submitted,
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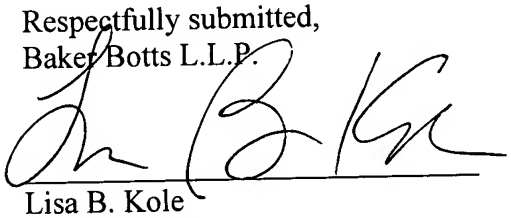

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